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REVISED
STATE CD

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

§107 and
pendent state
claims only - no
CA Amendment

PEOPLE OF THE STATE OF ILLINOIS and
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Plaintiffs,

v.

BELOIT CORPORATION, a Delaware
Corporation,

Defendant.

CIVIL ACTION NO.

91C20137

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REMEDIAL ACTION AND FEASIBILITY STUDY

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
WESTERN DIVISION

PEOPLE OF THE STATE OF ILLINOIS and
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,

Plaintiffs,

v.

BELOIT CORPORATION, a Delaware Corporation,

Defendant.

CIVIL ACTION NO.

91C20137

Investigation
CONSENT DECREE FOR REMEDIAL
ACTION AND FEASIBILITY STUDY

Is there one or 2? See complaint and sec. II. & info.

Plaintiff, People of the State of Illinois ("State"), by Roland W. Burris, Attorney General of the State of Illinois ("Attorney General"), on his own motion and at the request of the Illinois Environmental Protection Agency ("IEPA"), has filed a Complaint in this proceeding pursuant to Sections 22.2(f), ^{12(a) and 12(d)} ~~(and 22.2(k))~~ of the Illinois Environmental Protection Act (Ill. Rev. Stat., 1989, ch. 111 1/2, ^{10 01 et seq., as amended} ~~§ 1022-2(f), (k)~~) ("Act") and regulations promulgated pursuant thereunder, and pursuant to Sections ~~107 and 121~~ of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9607 ~~and 9621~~) ("CERCLA"), as amended, with respect to the operation and/or ownership of a facility commonly known as Beloit Corporation, which is located near Rockton, in Winnebago County, Illinois and/or the generation and/or transportation of hazardous substances, pollutants or contaminants to that Facility.

The plaintiff and defendant, Beloit Corporation, have consented to the entry of this Consent Decree without adjudication of any issue of fact or law and without this Consent Decree constituting any evidence against, an admission by, or an estoppel against any party with respect to any such issue.

NOW, THEREFORE, before the taking of testimony and without trial or adjudication of any issue of fact or law herein, and in consideration of the foregoing, and upon the consent of the Parties hereto to perform the activities to be ordered by the Court, the Parties having appeared, due notice having been given or waived, and the Court having reviewed the record and this Consent Decree, and being fully advised, the Court hereby orders, decrees and adjudges as follows:

I. JURISDICTION AND VENUE

This Court has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to ^{§ 113B} CERCLA ^{42 U.S.C. § 9613}. The Court, further, has pendent jurisdiction over the subject matter and the parties hereto for claims asserted pursuant to the Act. Beloit Corporation shall not challenge this Court's jurisdiction to enter and enforce this Consent Decree. Venue lies in this Western Division of the Northern District of Illinois. Additionally, any action commenced in District Court for the

purposes of interpretation, implementation and enforcement of the terms and conditions of this Consent Decree, including matters arising under dispute resolution, shall be in this Court.

II. PARTIES

A. PLAINTIFF.

1. The Plaintiff in this action is the People of the State of Illinois, acting through the Attorney General and IEPA, and represented by the Attorney General.

2. The Attorney General brings this action on his own motion and at the request of IEPA, pursuant to the statutory authority vested in him under Section 42 (d) and (e) of the Act.

3. The IEPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Illinois Environmental Protection Act, and charged, inter alia, with the duty to investigate violations of that Act, and to undertake response actions where necessary and appropriate to protect human health and the environment from releases or threats of release of hazardous substances, pollutants or contaminants. It is designated by Section 4 (1) of the Act as the implementing agency for the State for all purposes of CERCLA, as amended, and is authorized to take all action necessary or appropriate to secure to the State of Illinois the benefits of CERCLA. It is acting pur-

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suant to its own authority under the Act, (CERCLA and regulations promulgated pursuant to both laws⁶) ~~and as the lead agency pursuant to a cooperative agreement between IEPA and U.S. EPA entered May 5, 1990 under the provisions of Section 104(d) of CERCLA.~~

B. DEFENDANT.

Beloit Corporation is named as a defendant in the action. Beloit Corporation is organized under the laws of the State of Delaware, with its principal office in Beloit, Wisconsin.

III. SETTLEMENT, PURPOSES AND GENERAL OBLIGATIONS OF BELOIT CORPORATION

A. SETTLEMENT

1. The Parties stipulate that this Consent Decree is entered into for the purposes of settlement only and that neither the fact that a party has entered into this Consent Decree nor any of the facts stipulated herein shall be used for any purpose in this or any other proceeding except to enforce the terms hereof by the parties to this agreement, except that it may be admissible in a judicial or administrative proceeding between Beloit Corporation and its insurance companies, or in a contribution action brought by Beloit Corporation, or at the

option of Beloit Corporation, in an action between Beloit Corporation and another owner or operator of real property located within the Facility.

2. The undersigned representative for each party certifies that he or she is fully authorized by that party to enter into this Consent Decree and legally bind that party to the terms and conditions of this Consent Decree.

3. Beloit Corporation agrees to undertake all actions required by the terms and conditions hereunder, and consents to and will not contest or legally challenge the issuance or validity of this Consent Decree or the State's authority to enter into this Consent Decree pursuant to ^{§ 107 B} CERCLA, the Act and regulations promulgated pursuant to both laws. ✓

4. Beloit Corporation shall finance and perform all actions required of it under the terms and conditions of this Consent Decree.

B. PURPOSE AND GENERAL OBLIGATIONS OF BELOIT CORPORATION

1. Purpose. The purpose of this Consent Decree is to provide a response to a release or threatened release of hazardous substances, pollutants or contaminants at or from the Facility (as defined herein), to provide a mechanism for the selection of an appropriate remedial action that will be consistent with the National Oil and Hazardous Substances

Pollution Contingency Plan, 40 CFR Part 300 ("NCP") as amended, and to provide reimbursement of all response costs not inconsistent with the NCP incurred prior to entry of this Consent Decree and those which may be prospectively incurred by the State in connection with the oversight of Beloit Corporation's obligations under this Consent Decree, which obligations arise from releases or threatened releases of hazardous substances, pollutants or contaminants at or from the Facility.

These purposes shall be accomplished in phases, the first phase consisting of a Remedial Investigation and Feasibility Study ("RI/FS") as performed by Beloit Corporation, and the second phase consisting of the development of a Remedial Design and implementation of a Remedial Action ("RD/RA"). This Consent Decree only commits Beloit Corporation to conduct the RI/FS. The Parties contemplate that, following completion of the RI/FS and the conduct of a public hearing to describe the remedial alternatives considered and the recommended Remedial Action, implementation of the selected RA shall proceed pursuant to a subsequent Remedial Design/Remedial Action Consent Decree to be negotiated between the Parties if Beloit Corporation is to be a party liable for such further response action(s).

2. General Obligations of Beloit Corporation. These purposes shall be accomplished by the satisfactory completion by Beloit Corporation of the following general obligations, all of which are more particularly described elsewhere in this Consent Decree and in Attachments hereto:

- a. to conduct a Remedial Investigation (RI) to determine the nature and extent of the threat or potential threat to the public health, welfare or the environment caused by the release or threatened release of hazardous substances, pollutants or contaminants at or from the Facility by study of the contamination at and around the Facility, which study will include collection of data necessary to adequately characterize the Facility and any adjacent areas affected by releases or threatened releases and will lead to the development and evaluation of effective remedial alternatives, as more specifically provided in Attachment 1 - Statement of Work;
- b. to perform a Feasibility Study (FS) to identify and evaluate appropriate remedial alternatives for the appropriate extent of remedial action to prevent, mitigate or otherwise remedy any release or threatened release of hazardous substances, pollutants or contaminants at or from the Facility and to present relevant information derived from the RI and FS to the State, so that the appropriate remedial action may be selected in accordance with the NCP by IEPA, in consultation with the Attorney General, as provided in Attachment 1 - Statement of Work;

- c. to reimburse IEPA and the Attorney General for all response costs incurred by them not inconsistent with the NCP prior to entry of this Consent Decree as the result of releases or threatened releases at or from the Facility and oversight costs incurred by them in overseeing Beloit Corporation's fulfillment of obligations imposed upon it under this Consent Decree.
- d. to conduct all work described in a and b, above, and in the Statement of Work, in a manner which is consistent with the NCP; and
- e. to satisfactorily perform each and every of the other requirements of Beloit Corporation under the Partial Consent Decree.

IV. PARTIES BOUND AND NOTIFICATION RESPONSIBILITIES

A. PARTIES BOUND.

This Consent Decree applies to and binds the following persons, as defined in Section 101(21) of CERCLA and Section 1003.26 of the Act;

- 1. the Attorney General;
- 2. the IEPA; and

3. Beloit Corporation, its successors and assignees, and all officers, directors, principals, agents, firms, subsidiaries and divisions acting under or for Beloit Corporation. The proper completion of Work and activities under this Consent Decree shall be the sole responsibility of Beloit Corporation.

B. RESPONSIBILITY OF BELOIT CORPORATION.

1. Ensuring Compliance. The proper completion of the Work and activities under this Consent Decree shall be the sole responsibility of Beloit Corporation. Beloit Corporation shall be responsible for ensuring the compliance of its officers, directors, agents, employees and principals, as well as any and all contractors, consultants, firms, and other persons or entities acting under or for them with respect to each and every term and condition of this Consent Decree. Beloit Corporation shall not raise as a defense to any action to enforce this Consent Decree the failure of any of its agents, officers, contractors or employees to take any action required to fully comply with the provisions of this Consent Decree. Beloit Corporation shall finance and perform all actions required of it under the terms and conditions of this Consent Decree.

2. Change of Ownership. No change in ownership, corporate, or partnership status shall in any way alter the status or responsibility of Beloit Corporation under this Consent Decree.

C. NOTIFICATION RESPONSIBILITIES

Beloit Corporation shall provide a copy of this Consent Decree to all contractors hired to perform the Work required by this Consent Decree, and shall require those contractors to provide a copy of this Consent Decree to any subcontractor retained to perform any part of the Work.

V. NOTICE OF ACTION

A. NOTICE TO PRPs.

The IEPA has notified all potentially responsible parties ("PRPs") whom it has identified as of the date of entry of this Consent Decree of this action, and has provided them with the names and addresses of all known PRPs, the IEPA's estimate of the volume and nature of hazardous substances, contaminants or pollutants contributed by each of them, and a ranking by the volume of the substances, contaminants and pollutants at the Facility, to the extent such information is currently available to IEPA.

B. NOTICE TO PRESIDENT AND TRUSTEES.

On June 22, 1990, the IEPA notified the President of the United States, the Federal Natural Resources Trustee, and the State Trustees of Natural Resources of this action by providing each of them with a copy of the Notice Letter sent to each identified PRP. The State Natural Resource Trustees are the Directors of the: (1) Illinois Department of Energy and Natural Resources, (2) Illinois Department of Conservation, (3) Division of Water Resources of the Illinois Department of Transportation and (4) IEPA.

VI. CONSISTENCY WITH FEDERAL AND ILLINOIS LAW

The activities conducted pursuant to this Consent Decree shall be subject to reasonable approval by the State as provided herein, shall employ sound scientific, engineering and construction practices and shall be consistent with CERCLA, as amended, and the NCP, as amended, and the Illinois Hazardous Substance Pollution Contingency Plan, 35 Ill. Adm. Code Part 750, as amended. The Work shall be completed in accordance with the standards, specifications and schedule of completion set forth in this Consent Decree and the attached Statement of Work.

VII. DEFINITIONS

A. DEFINITIONS.

Whenever the following terms are used in this Consent Decree and the Attachments hereto, the following definitions shall apply:

1. "Act" means the Illinois Environmental Protection Act, (Illinois Revised Statutes, 1989, ch. 111-1/2, sections 1001 et seq., as amended).

2. "Engineer" means the company or companies retained by the Beloit Corporation to prepare or oversee preparation by subcontractors of the plans and specifications necessary to accomplish the RI and FS described in the Statement of Work attached to this Consent Decree as Attachment 1.

3. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986) ("SARA").

4. "Consent Decree" means this Decree and all attachments hereto. In the event of conflict between this Consent Decree and any attachment, the Decree shall control.

5. "Contractor" means the company or companies retained by or on behalf of Beloit Corporation to undertake and complete or to oversee the undertaking or completion of, the Work required by

this Consent Decree. Each contractor and subcontractor shall be qualified to do those portions of the Work for which it is retained. Each contractor and subcontractor shall be deemed in privity of contract with Beloit Corporation within the meaning of 42 U.S.C. 9607(b).

6. "Days" means calendar days unless otherwise specified.

7. "Documents" means, but shall not be limited to, documents, correspondence, narrative reports, computer discs, video recordings, records, files, photographs, sampling and monitoring data and analyses, chain of custody records, manifests, contracts, trucking logs, bills of lading, receipts, records pertaining to traffic routing, destination of waste materials, and volume and chemical nature of such materials, and any and all documentary evidence of any kind, reflecting any and all information concerning the Facility's conditions and operation, the transportation to and deposition and handling of hazardous substances, contaminants and pollutants at the Facility, and any releases or threatened releases of hazardous substances, contaminants or pollutants at or from the Facility, including any and all investigatory and response actions undertaken by any person at the Facility or on any adjacent area affected by releases or threatened releases. The term "Document" shall be construed broadly.

8. "Effective date" means the date this Consent Decree is entered by the District Court.

9. "Facility" shall mean facility as that term is defined in CERCLA at 42 U.S.C. Section 9601 (9) and in Section 1022.2(h)(1)(A) of the Act. More specifically, "Facility" shall mean the area or areas bordered to the west by the Rock River; to the north by Prairie Hill Road; to the east by Blackhawk Blvd.; and to the south by an access road projected from the Rock River to Blackhawk Blvd., where Beloit Corporation and any non-settling PRPs have conducted operations involving hazardous substances, pollutants or contaminants, or where Beloit Corporation and any non-settling PRPs have deposited, stored, disposed, treated or placed hazardous substances, contaminants or pollutants or where such materials have otherwise come to be located. The Facility is located near Rockton, in Winnebago County, Illinois in Section 12, Township 46 North, Range 14 East. The facility is approximately one square mile in size, and extends over both developed and undeveloped commercial and residential property as shown on the map attached as Attachment 2. The Facility was placed on the NPL by U.S. EPA by rulemaking appearing at 55 FR 35514 (August 30, 1990). "Facility" shall also include property contiguous to the boundaries set forth above to the extent affected by a release or threatened release of a hazardous substance, pollutant or contaminants from within those boundaries.

10. "Hazardous Substance" shall have the meaning provided in Section 101(14) of CERCLA, 42 U.S.C. 9601(14).

11. "Hazardous Waste" shall have the meaning provided in Section 1004(5) of RCRA, 42 U.S.C. Section 6903, 40 C.F.R. 261.3, and in 35 Ill. Adm. Code 721.103 and 721.104.

12. "IEPA" or "Agency" means the Illinois Environmental Protection Agency, an administrative agency of the State of Illinois, its employees, and its authorized representatives.

13. "National Contingency Plan" or "NCP" means the term used in Section 105 of CERCLA, 42 U.S.C. 9605, and promulgated at 40 CFR Part 300, 55 FR 8666 (March 8, 1990).

14. "Response Costs" means all costs which are not inconsistent with the National Contingency Plan which have been or may be incurred by the State, or by Beloit Corporation with the State's advance authorization and approval, as the result of releases or threatened releases at or from the Facility, including, but not limited to, such past and future costs (including costs which are the result of enforcement activities) as have been or may be incurred by the State in monitoring the compliance of Beloit Corporation with this Consent Decree, pursuant to the Act, CERCLA and regulations promulgated under both laws. Response Costs of the State may include, but shall not be limited to, payroll and other direct costs; indirect and overhead costs; administrative costs such as photocopying, postage, telephone calls and community relations; conveyances; sampling and laboratory costs; travel costs incurred by the State Project Manager and other State employees, agents or consultants;

contractor costs; investigatory Work and engineering evaluations conducted pursuant to the State's direction; costs for review of the Work performed pursuant to this Consent Decree; and litigation costs necessary to obtain overdue payments for Response Costs or penalties, or to otherwise enforce this Consent Decree.

15. "Parties" means the People of the State of Illinois, acting through the Attorney General and IEPA, as represented by the Attorney General, and Beloit Corporation.

16. "Plaintiff" or "State" means the People of the State of Illinois, acting through the Attorney General and IEPA, as represented by the Attorney General.

17. "Project Coordinator" refers to the person designated by Beloit Corporation to coordinate, monitor or direct the Work at, around and related to the Facility.

18. "Project Manager" or "State Project Manager" refers to the IEPA employee designated by IEPA to coordinate, monitor or direct the Work at, around and related to the Facility, in consultation with the Attorney General.

19. "QAPP" means the Quality Assurance Project Plan for the Work. It shall be consistent with current U.S. EPA guidance.

20. "RI Work Plan" means the plan for the conduct of the Remedial Investigation of contamination at and around the Facility.

21. "Statement of Work" or "SOW" means the plan, set forth as Attachment 1 to this Consent Decree, for implementation of the Remedial Investigation and Feasibility Study, and any subsequent amendments of Attachment 1 authorized and approved by the State, pursuant to the provisions of this Consent Decree.

22. "U.S. EPA" means the United States Environmental Protection Agency, its employees, agents and authorized representatives.

23. "Work" means all of the activities required by this Consent Decree, including the satisfactory conduct of the Remedial Investigation and Feasibility Study to completion, as more particularly specified in the SOW attached hereto.

24. Unless otherwise specified herein, terms used in this Consent Decree and attachments shall have the meanings defined in CERCLA, the National Contingency Plan, the Act and applicable regulations, as they are amended from time to time.

VIII. FINDINGS OF FACT

Based upon information available to the Illinois Environmental Protection Agency at the time the parties signed

this Consent Decree, the Illinois Environmental Protection Agency (IEPA) makes the following findings:

A. A release or substantial threat of release of hazardous substances into the environment appears to be emanating from a facility located in Section 12, Township 46 North, Range 14 East in the Village of Rockton, Winnebago County, Illinois. This Facility, which covers approximately one square mile, extends over both developed and undeveloped commercial and residential property. Beloit Corporation owns a predominate portion of the property which comprises the Facility. The Facility is bordered to the west by the Rock River; to the north by Prairie Hill Road; to the east by Blackhawk Boulevard and to the south by an access road projected from the Rock River to Blackhawk Boulevard.

B. In May of 1982, sampling of private wells by IEPA in the Watts Avenue vicinity first indicated the presence of certain volatile organic compounds (VOCs): 1,1,1-trichloroethane, and 1,1-dichloroethene. Between May, 1986, and July, 1987, IEPA performed a study to characterize this contamination. Periodic sampling as part of this study and subsequent sampling at both monitoring and private wells detected: 1,1-dichloroethene, tetrachloroethene, 1,1,1-trichloroethane, 1,1-dichloroethane and 1,2-dichloroethane, and trans-1,2-dichloroethene, some of which at levels reported to exceed Maximum Contaminant Levels specified by the Safe Drinking Water Act.

C. Beloit Corporation also studied suspected releases of hazardous substances. Beginning in July 1984, the Beloit Corporation carried out a series of studies on and around the Blackhawk Property. These studies were performed by independent professionals with the main objective of determining if potential contaminant sources exist on the Beloit Corporation Blackhawk Plant Property. Follow up studies performed between May 1987 and August 1987, also addressed concerns and questions regarding geology, hydrogeology and VOC occurrences. These investigations suggested to Beloit Corporation that the specific areas on the Beloit Corporation Property which were studied as potential contaminant sources did not appear to be the cause of the contamination which had been detected in monitoring and private wells. These studies were submitted to IEPA, and, following consultation with IEPA, it was agreed that further investigation was appropriate and should proceed as part of the process whereby the Facility was placed on the National Priorities List.

D. Beloit Corporation, which has owned its present property since approximately 1957, operates a manufacturing facility engaged in the production of paper rolling machines. In addition to the manufacturing plant, a research and development (R&D) facility is operated on the Beloit Corporation property.

E. Beloit Corporation has, in the past, used chlorinated organic compounds to wipe coolant off of metal parts produced at the manufacturing facility. In addition, chlorinated compounds were used at the R&D facility for maintenance purposes.

F. On-site land application of paper fiber sediment from the R&D facility's wastewater treatment lagoons occurred at the southern portion of the Beloit Corporation property.

G. Foundry sand from the Beloit Corporation's South Beloit Foundry was placed for an approximate six-month period in an area southwest of the manufacturing facility.

H. On October 2, 1985, the IEPA investigated three 55-gallon barrels, some of the contents of which had leaked into the soil on Beloit Corporation property. Samples of the spillage revealed methylene chloride, carbon tetrachloride, trichloroethane, 1, 1, 1-trichloroethane, toluene, ethylbenzene and xylenes.

I. Soterion Inc. operated an oil recycling facility at the southern end of the Watts Avenue neighborhood from approximately mid 1979 to January 1984. United Recovery, Inc. subsequently operated at this property, reprocessing chemicals and scrap metals. Unknown liquids were reportedly disposed in the on-site septic system and a dry well. The property is owned by LaVerne Collins. IEPA investigations in 1982 noted stained soil and piles of waste powders at various sections of the Soterion property. No VOCs which appeared in the Watts Avenue samples were detected at Soterion by IEPA in this limited investigation.

J. Safe-T-Way, located one block east of Watts Avenue at 918 North Blackhawk Boulevard, is engaged in the manufacture of explosion proof gas cans. Safe-T-Way has advised IEPA that

contaminants found in the Watts Avenue wells are not used at this property.

K. The Facility was proposed by USEPA for inclusion to the National Priorities List under the name Beloit Corporation at 53 Fed. Reg. 23987 (June 24, 1988), and listed on the NPL at 55 Fed. Reg. 35514 (August 30, 1990).

IX. CONCLUSIONS OF LAW

A. CONCLUSIONS.

For purposes of jurisdiction only and without admission of any fact, wrongdoing, liability or responsibility by Beloit Corporation, this District Court hereby makes the following conclusions of law based on the information available as of the effective date of this Consent Decree:

1. The property bounded by the Rock River, Prairie Hill Road, Blackhawk Boulevard and an access road projected from the Rock River to Blackhawk Boulevard is a "Facility" as defined in Section 101(9) of CERCLA.

2. Sometime prior to 1988, "hazardous substances" as defined in Section 101(15) of CERCLA were deposited, stored,

disposed of, placed, or otherwise came to be located at the Facility.

3. Beloit Corporation is a "person" as defined in Section 101(21) OF CERCLA.

4. Beloit Corporation was an owner or operator of a portion of the Facility during relevant times within the meaning of Section 101(20) of CERCLA. Beloit Corporation is a liable person pursuant to Section 107 of CERCLA ~~and is a potentially~~
~~responsible party for the purposes of Section 122 of SARA~~ for all costs of removal and remedial action incurred by the State of Illinois not inconsistent with the National Contingency Plan.

5. The past, present and potential migration of hazardous substances from the Facility constitutes an actual and/or threatened "release" into the "environment" as those terms are defined in Sections 101(22) and 101(8) of CERCLA.

X. DETERMINATIONS

A. DETERMINATIONS.

1. Based on the foregoing Findings of Fact and Conclusions of Law, the Court finds that Beloit Corporation has agreed to and will promptly and properly take appropriate response action at the Facility by conducting a Remedial Investigation and Feasibility Study ("RI/FS") and is qualified to perform the RI/FS;

2. Based on the foregoing Findings of Fact and Conclusions of Law, the Court finds that the actions outlined in this Consent Decree are necessary to ensure the protection of public health, welfare and the environment; and

3. Based on the foregoing Findings of Fact and Conclusions of Law, the Court finds that the actions required by this Consent Decree, if properly performed as set forth in this Consent Decree, are in the public interest and are consistent with the National Contingency Plan, 400 CFR Part 300, as amended, and with CERCLA, as amended by SARA.

XI. STATEMENT OF WORK

Beloit Corporation shall undertake, complete, and finance all Work called for by this Consent Decree and its attached Statement of Work so as to implement the objectives of this Consent Decree. Beloit Corporation shall undertake, complete, and finance the Work called for in the attached Statement of Work which outlines the activities necessary to complete the RI/FS. The Statement of Work is attached hereto as Attachment 1, is incorporated herein, and is made an enforceable part of this Consent Decree.

XII. RI/FS WORK PLAN

A. CONSENT DECREE TO GOVERN.

This Consent Decree and all federal and state laws and guidance referenced herein shall govern all aspects of the Remedial Investigation and Feasibility Study required herein.

B. PLANS TO BE PREPARED.

The following plans shall be prepared by Beloit Corporation:

1. Work Plan. Within 60 days of the effective date of the Consent Decree, Beloit Corporation shall submit a Work Plan to the State for a Remedial Investigation and Feasibility Study (hereinafter referred to as the "RI/FS Work Plan"). The RI/FS Work Plan shall provide, at minimum, for the submittal of a preliminary and final Remedial Investigation Report, and a preliminary and final Feasibility Study.

2. Contents of Work Plan. The RI/FS Work Plan submittal shall include, but not be limited to, the following project plans: (a) a field sampling plan; (b) a health and safety plan; (c) a plan for satisfaction of permitting requirements; (d) a quality assurance project plan ("QAPP"); (e) a data management plan; and (f) a schedule for implementation of RI/FS tasks and

deliverables such as technical memoranda, preliminary and final Remedial Investigation Reports, preliminary and final endangerment assessments, and preliminary and final Feasibility Study Reports.

C. GUIDANCE.

The RI/FS Work Plan shall be developed in conformance with the Statement of Work attached hereto, the standards set forth in Section 121 of CERCLA, U.S. EPA "Guidance on Remedial Investigations Under CERCLA", dated May 1985, as amended in October, 1988 (the "RI Guidance"), and U.S. EPA "Guidance on Feasibility Studies Under CERCLA, dated April 1985, as amended in October, 1988 (the "FS Guidance"), any additional guidance documents provided by the U.S. EPA and/or IEPA, and the National Contingency Plan. In the event that any such additional guidance is provided to Beloit Corporation by the IEPA after the effective date of this Consent Decree and prior to IEPA's approval of the Work Plan, as provided in the following Paragraph D., Beloit Corporation shall have 21 calendar days to revise the RI/FS Work Plan as necessary, and any time limits provided in this Consent Decree shall be extended as necessary to accommodate said 21 day period. The Feasibility Study shall conform to Section 121 of CERCLA, as amended by SARA, the NCP as amended, applicable FS guidance, and applicable state and federal policies.

D. REVIEW OF RI/FS WORK PLAN.

1. Work Plan Review. The RI/FS Work Plan shall be subject to review, modification, and approval by the State.

2. Notification of Approval. Within 45 calendar days of receipt of the RI/FS Work Plan, the State Project Manager shall notify Beloit Corporation, in writing, of approval or disapproval of the RI/FS Work Plan, or any part thereof. In the event that a longer review period is required, the State Project Manager shall notify Beloit Corporation of that fact within 30 calendar days of receipt of the RI/FS Work Plan. Unless express authorization is provided, Beloit Corporation shall not begin field work under its Work Plan until such Plan is approved by IEPA, notwithstanding the time period stated in this subsection for action by IEPA. In the event of any disapproval or conditional approval of a plan or report, the State shall specify, in writing, any deficiencies and required modifications to the RI/FS Work Plan.

3. Submission of Revised Work Plan. Subject to the provisions of Section XXV: DISPUTE RESOLUTION of this Consent Decree, within 30 calendar days or receipt of any IEPA RI/FS Work Plan disapproval or modification, Beloit Corporation shall submit a revised RI/FS Work Plan to the State which incorporates modifications required by the State. Prior to invoking Section XXV: DISPUTE RESOLUTION, the Parties agree to negotiate in good

faith during the 30 day period following notice of any disapproval or modification with the objective of reaching a mutually acceptable and approvable document.

4. State Right to Conduct RI/FS. In the event of State disapproval of the modified RI/FS Work Plan, and the failure to reach a mutually acceptable and approvable document during the 30-day period following notice of disapproval or modification, the State retains the right to conduct a complete RI/FS and/or to enforce the terms of this Consent Decree.

5. Implementation of Work Plan. Beloit Corporation shall proceed promptly to implement the work detailed in the RI/FS Work Plan if and when the RI/FS Work Plan is fully approved by the State. Unless otherwise directed by the State, Beloit Corporation shall not commence field activities until approval by the State of the RI/FS Work Plan.

6. Incorporation of Work Plan. The fully approved RI/FS Work Plan shall be deemed incorporated into and made an enforceable part of this Consent Decree. In order to assure that the RI/FS is conducted in full compliance with CERCLA, as amended, the Work Plan shall conform with all relevant portions of CERCLA, including, but not limited to Section 121 of SARA. All Work shall be conducted in accordance with CERCLA, the National Contingency Plan now in effect or as amended to the extent such amended NCP so requires, now current RI Guidance and FS Guidance, and the requirements of this Consent Decree, including the

standards, specifications and schedule contained in the RI/FS Work Plan.

XIII. WORK

Beloit Corporation shall proceed with the activities detailed in the RI/FS Work Plan when it is fully approved by the State, in accordance with the terms and schedules of the approved RI/FS Work Plan. The Work shall be completed in accordance with all requirements of this Consent Decree and the Statement of Work, including the standards, specifications, and the time periods set forth in this Consent Decree and Statement of Work. Unless otherwise directed by the State, Beloit Corporation shall not commence field activities until approval by the State of the RI/FS Work Plan.

XIV. ADDITIONAL WORK

A. NOTIFICATION OF ADDITIONAL WORK.

In the event that the IEPA, in consultation with the Attorney General, or in the event Beloit Corporation, determines that additional work, including remedial investigatory work and/or engineering evaluations, is necessary to accomplish the objectives of the RI/FS, notification of such additional work shall be provided to each of the other parties.

B. DETERMINATION BY BELOIT CORPORATION.

Any additional work determined to be necessary by Beloit Corporation shall be subject to approval by IEPA, in consultation with the Attorney General.

C. ADDITIONAL WORK SUBJECT TO DISPUTE RESOLUTION.

Any additional work determined to be necessary by Beloit Corporation and not approved by the State, or determined to be necessary by the State, including the standards, specifications, and schedules relating to the Additional Work, shall be subject to the provisions of Section XXV: DISPUTE RESOLUTION.

XV. REPORTS AND REVIEWS OF REPORTS

A. REPORTS.

Beloit Corporation shall submit preliminary and final Remedial Investigation Reports and preliminary and final Feasibility Study Reports and any other plans or reports required by the RI/FS Work Plan to the State in accordance with the schedule contained in the approved RI/FS Work Plan.

B. REVIEW OF REPORTS.

1. Review of Reports. The State shall review the preliminary and final Remedial Investigation Report, the preliminary and final Feasibility Study Report and any other preliminary or final plans or reports specified in the RI/FS Work Plan, within 45 calendar days of receipt of such plans or reports. The State may extend the time for review by notifying Beloit Corporation of such extension within 30 days of receipt of the plan or report.

2. Specification of Modifications. If the State does not approve any preliminary or final plan or report, the State shall specify, in writing, any deficiencies and required modifications.

3. Submission of Revised Plan. Subject to the provisions of Section XXV: DISPUTE RESOLUTION of this Consent Decree, Beloit Corporation shall submit a revised plan or report which shall incorporate any State modifications or additions to the State within 25 days of receipt of such plans or reports or such longer period as is reasonably necessary, as established by the State Project Manager in writing.

4. State Approval. In the event of subsequent disapproval of any revised plan or report for which the State's required modifications can not be resolved without invoking the procedures under Section XXV: DISPUTE RESOLUTION, the State retains the right, among other things, to perform additional studies, conduct a complete or partial RI/FS and/or enforce the terms of this Consent Decree in the appropriate judicial forum.

C. PROGRESS REPORTS.

1. Beloit Corporation shall prepare and provide to the Attorney General and IEPA monthly written progress reports which contain at a minimum:

- a. A description of the actions, sampling, and tests, which have been taken toward achieving compliance with this Consent Decree during the previous month;
- b. Target completion dates for Work Plan tasks and activity, including the project completion, if different than contained in the Work Plan and an explanation of any deviation from the Work Plan schedule;
- c. A description of activities which are scheduled for the next month and, if applicable, other information relating to the progress of construction as is customary in the industry;
- d. If applicable, information regarding percentage of completion;

- e. A description of any observed detrimental changes in the condition of the Facility, such as erosion, and changes in Facility security, such as changes in access;
- f. A description of whether work was completed in accordance with the Work Plan schedule during the last month, including whether each project deliverable required by the Work Plan was submitted on schedule; and if not, whether a Stipulated Penalty under this Consent Decree has been triggered by not meeting the deadline; and if so, whether the penalty had been paid, and if not, when the penalty will be paid;
- g. Once a deadline has been missed and completed at a later date, the next forthcoming monthly report shall indicate the original scheduled completion date, the projected date that was given for completion and the actual date such steps were completed, as well as, if applicable, the actual date the penalty was mailed and the amount paid; and
- h. Such other information that the State Project Manager reasonably requests in writing.

2. The monthly written progress reports shall be submitted to IEPA by the fourteenth day of each calendar month following the commencement of the activities required in the RI/FS Work Plan.

3. The date of submission or notification will be determined by the date of the postmark or other means acceptable to IEPA. The burden of proving that a submission was timely is that of Beloit Corporation. If the date for submission of any item or notification required by this Consent Decree falls upon a weekend or State or federal holiday, the time period for submission of that item is extended to the next working day following the weekend or holiday.

4. Neither failure of the State to expressly approve or disapprove of a submission by Beloit Corporation within the specified time period nor the absence of comments shall be construed as approval of such submission by the State.

D. REPORTING TO NATIONAL RESPONSE CENTER, U.S. EPA AND STATE.

Upon the occurrence of any event during performance of the Work which, pursuant to Section 103 of CERCLA, requires reporting to the National Response Center (800/424-8802 or current number if changed), Beloit Corporation shall promptly orally notify the State Project Manager and the Illinois Emergency Services and Disaster Agency (800/782-7860 or current number if changed). In

addition to the reporting required by CERCLA, Section 103 and SARA, Title III, Section 304, within 20 days of the onset of such an event which is related to RI/FS activities, Beloit Corporation shall furnish to the Attorney General and IEPA a written report setting forth the events which occurred and the measures taken, and to be taken, in response thereto, and an in-depth description of the nature and extent of damage or persons or property and of any claims asserted against Beloit Corporation as the result of such an event or occurrence. Within 30 days of the conclusion of such an event, Beloit Corporation shall submit a report to the Attorney General and IEPA setting forth all actions taken to respond thereto.

XVI. ADDRESSES FOR ALL CORRESPONDENCE

A. CORRESPONDENCE ADDRESSES.

Documents, including notices, plans, reports, approvals, disapprovals and other correspondences to be submitted pursuant to this Consent Decree shall be sent by certified mail, or any other form of mail delivery which records the date of receipt, or any other means of transmission reasonably acceptable to IEPA to the following addresses, or to such other addresses as IEPA, the Attorney General, U.S. EPA or Beloit Corporation may hereafter designate in writing:

To EPA (in triplicate):

Paul Takacs
State Project Manager
Illinois Environmental
Protection Agency
2200 Churchill Road
P. O. Box 19276
Springfield, IL 62794-9176

To U.S. EPA:

Hazardous Waste Enforcement
Branch M
United States Environmental
Protection Agency
Federal Remedial Project Manager
Region 5 - 5 HR-11
230 South Dearborn Street
Chicago, Illinois 60604

*attn: Beloit Remedial Project
mgr.*

To the Attorney General:

Matthew J. Dunn
Chief
Attorney General's Office
Environmental Control Div.
100 West Randolph Street
12th Floor
Chicago, IL 60601

To Beloit Corporation:

Andrew H. Perellis, Esq.
Coffield Ungaretti Harris &
Slavin
3500 Three First National
Plaza
Chicago, Illinois 60602

Copy to:

Dennis Hays, Esq.
Beloit Corporation
One St. Laurence Avenue
Beloit, Wisconsin 53511

B. CHANGE OF ADDRESS.

Any party may change its document recipient by providing ten days advance written notice to all other parties.

C. SUBMISSIONS.

Where documents are to be submitted to the State, they are to be submitted to both of the above State addresses concurrently, and notices, documents or reports that are submitted shall reference the caption and case number of this proceeding.

D. SATISFACTION OF NOTICE.

Notice to the individuals listed above in the "Section XVI: ADDRESSES FOR ALL CORRESPONDENCE," shall constitute complete satisfaction of any notice requirement of this Consent Decree with respect to the State, U.S. EPA and Beloit Corporation

XVII. COMPLIANCE WITH APPLICABLE LAWS.

In addition to statutes and regulations stated elsewhere, all Work and activities undertaken by Beloit Corporation pursuant to this Consent Decree shall be performed in compliance with all applicable Federal, State and local laws, including but not limited to, all Occupational Safety and Health Administration and Department of Transportation regulations, the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA") and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. 6901 et seq., and regulations promulgated thereunder by U.S. EPA and codified at Title 40 of the Code of Federal Regulations, and 35 Ill. Adm. Code Subtitle G, and all applicable, or relevant and appropriate regulations ("ARARS"). In the event of a conflict in the application of Federal, State or local laws, ordinances and regulations, Beloit Corporation shall comply with the more/most stringent such law, ordinance or regulation.

XVIII. PERMITS AND CONTRACTS

A. RESPONSIBILITY TO OBTAIN PERMITS.

1. Beloit Corporation shall be responsible for obtaining all Federal, State or local permits which are necessary for the performance of any Work hereunder. The State will use its best efforts to assist Beloit Corporation in obtaining such permits. All activities undertaken by Beloit Corporation pursuant to this Consent Decree shall be undertaken in accordance with the requirements of all applicable local, state and federal permits.

2. ~~Pursuant to Section 121(e) of CERCLA, 42 U.S.C. Section 9621(e), no federal, state, or local permits are required for work conducted entirely on-site pursuant to this Consent Decree.~~ Beloit Corporation shall obtain all permits or approvals necessary for ^{on- and} off-site work under federal, state or local law, and shall submit timely applications and requests for any such permits and approvals. Delays for which Beloit Corporation is not responsible in obtaining permits shall be governed by Section XXIII: FORCE MAJEURE, provided that when any delay in obtaining permits is due to the negligent acts or wrongful omissions of Beloit Corporation, Section XXIII: FORCE MAJEURE shall not apply.

B. CONTRACT LANGUAGE.

Beloit Corporation shall include in all contracts or subcontracts entered into for Work required under this Consent Decree provisions stating that such contractors or subcontractors, including their agents and employees, shall perform all activities required by such contracts or subcontracts in compliance with all applicable laws and regulations.

C. CONSENT DECREE NOT A PERMIT.

This Consent Decree is not, nor shall it act as, nor is it intended by the Parties to be, a permit issued pursuant to any federal or state statute or regulation.

XIX. ACCESS

A. OBTAINING ACCESS AGREEMENTS.

To the extent that the Facility or other areas where Work is to be performed hereunder is presently owned, or shall subsequently become owned, by persons other than those bound by this Consent Decree, Beloit Corporation shall obtain, or shall use its best efforts to obtain, access agreements from the present owners, or subsequent owners, within 30 calendar days of the

latter of: a) the effective date of this Consent Decree, or b) the date it first comes to the attention of Beloit Corporation that access will be required (e.g. transfer of a property interest, or identification in the Work Plan, or a need to perform additional work on other areas arises during the course of work required by this Consent Decree). Such agreements shall provide access for authorized representatives of the IEPA, Attorney General, and U.S. EPA, and for the contractors of Beloit Corporation as specified in the subsection following. In the event that such access agreements are not obtained, within ten days, Beloit Corporation shall so notify the IEPA and the Attorney General in writing.

Thereafter, the IEPA and the Attorney General's Office shall use their best efforts consistent with written guidance in effect at that time ³ ~~to exercise their authorities under CERCLA § 104(e),~~ ~~as amended, 42 U.S.C. § 9604(e),~~ ³ and state law, to assist in obtaining access. All time periods specified herein and in the schedule of activity pursuant to the RI/FS Work Plan shall be extended for a period not to exceed any additional time taken to gain access. The IEPA may terminate this Consent Decree should the inability to gain access to the Facility or other areas materially affect the ability of Beloit Corporation to perform the Work required herein.

B. ACCESS ACTIVITIES.

1. Access Rights. Authorized representatives of the IEPA, the Attorney General, and the contractors of Beloit Corporation, upon presentation of appropriate credentials, shall be allowed access at all reasonable times to those portions of the Facility and other areas where Work is to be performed. Any agreement obtained under "Section XIX: A. OBTAINING ACCESS AGREEMENTS," above, shall include access for: inspecting records, operating logs and contracts related to the Facility and work required by this Consent Decree; reviewing the progress of Beloit Corporation in carrying out the terms of this Consent Decree; conducting such tests, inspections, and sampling as the IEPA or Attorney General or U.S. EPA may deem necessary; using a camera, including a video camera, sound recording, or other documentary type equipment; and verifying the data submitted to the IEPA, Attorney General and U.S. EPA by Beloit Corporation hereunder. Beloit Corporation shall permit such authorized representatives to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring data, which are collected as part of the RI/FS Work Plan or pertain to its implementation, subject to Subsection E. Confidential Claim of Section XXI: SAMPLING AND DATA/DOCUMENT AVAILABILITY of this Consent Decree, and subject to claims of privilege, such as attorney-client communication, attorney work product or other applicable legal privileges.

2. Health and Safety Plans. All persons with access to the Facility pursuant to the Consent Decree shall comply with approved health and safety plans.

3. Consent Decree Not Restrictive. Nothing herein shall be construed as restricting the inspection or access authority of the IEPA, Attorney General and U.S. EPA under any law or regulation.

XX. PROJECT COORDINATOR AND PROJECT MANAGER

A. PROJECT COORDINATOR.

1. Notification. On or before the effective date of this Consent Decree, Beloit Corporation shall notify the persons listed in Section XVI: ADDRESSES FOR ALL CORRESPONDENCE, in writing, of the name, title, address, telephone and facsimile number, and qualifications of their proposed Project Coordinator, who shall be a qualified independent registered professional engineer or certified geologist or other qualified person. Beloit Corporation shall likewise notify the State of the names of principal contractors and/or subcontractors proposed to be used in carrying out the Work to be performed pursuant to this Consent Decree.

2. State Approval. Selection of any such Project Coordinator, engineer, geologist or contractor, subcontractor

and/or qualified person shall be subject to reasonable approval by the State, which shall so notify Beloit Corporation in writing of such approval. Beloit Corporation may utilize its own employees to perform subordinate tasks only upon receipt of State's written approval.

3. Project Coordinator Authority. All Work, including RI/FS Work Plans, reports and studies, to be performed by Beloit Corporation pursuant to this Consent Decree shall be under the direction and supervision of the approved "Project Coordinator." The Project Coordinator for Beloit Corporation, together with the State Project Manager, shall be responsible for overseeing the implementation of this Consent Decree and for maintaining access to the Facility.

4. Notification of Endangerment. The Project Coordinator shall notify the State's Project Manager, or, if unavailable, the State's Alternate Project Manager or designate, immediately upon the occurrence of any event which, in the Project Coordinator's judgment, may present an imminent and substantial endangerment to the human health or welfare or the environment. The notice shall be followed by written notification to the IEPA within ten days, which explains the event, any action taken to eliminate the threat, and the precautions taken to avoid recurrence of a similar threat.

5. Presence On-Site. The Project Coordinator for the Facility or his designated representative shall be on-site at the

Facility during all hours of work at the Facility and shall be on call during the pendency of this Consent Decree.

B. STATE PROJECT MANAGER.

1. Notification. Within seven days after the effective date of this Consent Decree, the IEPA shall designate a State Project Manager for the Facility and shall notify the persons listed in Section XVI: ADDRESSES FOR ALL CORRESPONDENCE, in writing, of the name, title, address, telephone and facsimile number of the State Project Manger.

2. Authority. The State Project Manager, together with the Project Coordinator, shall be responsible for overseeing the implementation of this Consent Decree. The State Project Manager will be the State's designated representative for the Facility. The State Project Manager shall have the authority vested by the applicable provisions of ²~~CERCLA, the National Contingency Plan,~~
~~40 CFR Part 300, as amended,~~ and the Act.

3. No Modification of Consent Decree. In no event shall the State Project Manager have the authority to modify this Consent Decree or its attached Statement of Work.

C. HALTING ACTIVITY.

1. Authority to Halt Activity. The State Project Manager shall have the authority to halt, suspend, conduct, or direct any activity of Beloit Corporation required by this Consent Decree, or to direct any response action undertaken by the State, when conditions at the Facility present an imminent and substantial endangerment to the public health or welfare or the environment.

2. Authority to Require Performance. If the State Project Manager halts or suspends activity pursuant to this Section, he shall then have the authority to require Beloit Corporation to perform the activity in a manner consistent with the Consent Decree and Statement of Work and approved plans submitted thereunder, but also in a manner that will avoid or mitigate the threat he believes may occur. Beloit Corporation shall comply with his orders immediately. Any halt or suspension of work not caused by the negligent acts or wrongful omissions of Beloit Corporation shall constitute an event subject to Section XXIII: FORCE MAJEURE of the Consent Decree.

D. COMMUNICATIONS BETWEEN PROJECT COORDINATOR AND STATE PROJECT MANAGER.

To the maximum extent possible, communications between the State and Beloit Corporation, and all documents, reports,

approvals and other correspondences concerning the activities performed pursuant to the terms and conditions of this Consent Decree, shall be directed through the Project Coordinator and State Project Manager. During implementation of the RI/FS Work Plan, the Project Coordinator and State Project Manager shall, whenever possible, keep each other advised of significant events affecting the performance of the RI/FS, operate by consensus and shall attempt in good faith to resolve disputes informally through discussion of the issues.

E. DISPUTES.

If the parties disagree with any direction or order given by the State Project Manager, the matter shall be resolved in accordance with Section XXV: DISPUTE RESOLUTION. However, when the State Project Manager determines that conditions at the Facility may present an imminent and substantial endangerment to the public health or welfare or the environment, he may proceed as provided in subsection C., above, and need provide the Project Coordinator only with such notice as is reasonable under the circumstances.

F. MISCELLANEOUS.

1. Absence of Project Manager. The absence of the State Project Manager or his alternate from the Facility shall not be cause for stoppage of Work.

2. Alternate Project Manager/Coordinator. The IEPA may designate an Alternate State Project Manager and Beloit Corporation may designate an Alternate Project Coordinator from time to time. The Alternate Project Coordinator for Beloit Corporation must be technically qualified and approved in writing in advance by the State which approval shall not be unreasonably withheld. The State and Beloit Corporation shall inform each other of the name, address and business telephone number of their alternate project coordinator.

3. Authority of Alternates. The alternate project manager/coordinator shall have the same authority as the named project manager/coordinator, except in case of conflict, the orders of the named project manager/coordinator shall overrule the orders of the respective alternate.

4. Change. Beloit Corporation and the State shall each have the right to change their respective Project Coordinator and Project Manger and alternates. Such a change shall be accomplished by notifying the other Party in writing at least 10 calendar days prior to the change.

XXI. SAMPLING AND DATA/DOCUMENT AVAILABILITY

A. EXCHANGE OF INFORMATION.

Prior to the entry of this Consent Decree (or as soon thereafter as they are available), the State and Beloit Corporation shall exchange copies of all then available technical information about the Facility, including but not limited to, laboratory reports, test results, analytical data, and analyses of samples previously taken at the Facility to the extent one party is not already in possession of such information. This is subject to the provisions of Section XXII: E. Confidentiality Claim and subject to the right of the Parties to withhold information pursuant to applicable law.

B. SUBMITTAL OF NEW INFORMATION.

Beloit Corporation shall provide copies of all validated sampling and/or tests or other validated data generated by Beloit Corporation after the effective date of this Consent Decree in accordance with the Work Plan and such other data required or supporting the performance of the RI/FS Work Plan, including raw data, upon written request by the representatives of IEPA, Attorney General or U.S. EPA. Except for privileged documents, including documents which constitute attorney work product, or

documents, including trade secrets, unrelated to implementation of this Consent Decree, Beloit Corporation shall permit such representatives to inspect and copy all documents which pertain to the Remedial Investigation and other activities or Work to be performed under this Consent Decree.

C. NOTICE PRIOR TO SAMPLE DISPOSAL.

Before disposal of any soil or water sample by Beloit Corporation or its agents or contractors, the State may take possession of such samples upon written request, and Beloit Corporation shall cooperate in transferring possession.

D. SPLIT SAMPLES.

At the request of the IEPA Beloit Corporation shall provide split or duplicate samples to the IEPA of any samples collected. Beloit Corporation shall notify the IEPA at least seven calendar days in advance of any sample collection activity. IEPA or the Attorney General, whoever is requesting split samples, shall give Beloit Corporation reasonable advance notice of the sampling procedures that will be used and what constituents the samples will be analyzed for. Each party shall provide copies of the results of any such samples to the other parties. Such split samples and any tests thereof shall be

deemed validated, material, and accurate in any Dispute Resolution proceeding or other proceeding to enforce this Consent Decree if they have met the quality assurance requirements of this Consent Decree, except to the extent that age or the manner in which those samples were handled is demonstrated to render the results of any testing of those split samples scientifically unacceptable. In addition, IEPA shall have the right to take any additional samples that the State deems necessary. In the event that the State takes its own samples, the State shall give Beloit Corporation reasonable advance notice of the sampling procedures that will be used and what constituents the samples will be analyzed for so that Beloit Corporation may take split samples.

E. CONFIDENTIALITY CLAIM.

1. Assertion of Confidentiality. Pursua^{to}, and consistent with, applicable ~~federal~~^{state} laws and regulations ~~Section 104(e)(7) of CERCLA, as amended,~~ or any ^{if any} ~~or regulations~~ (2 Ill. Adm. Code Part 1827) may assert a confidentiality claim w^{it} information requested or submitted pursua^{ing} ~~any,~~ Consent Decree. Such an assertion must be ^{Comment may not be necessary} initiated as required by applicable law.

2. Restrictions on Confidentiality. Confidentiality claim shall be subject to the rest.

in ~~Section 104(e)(7)(E) and (F) of CERCLA~~ and Sections 7 and 7.1 of the Act. Information determined to be confidential by the State in accordance with ^{any} applicable federal laws and regulations and applicable state laws and regulations will be afforded by the State the full protection provided by such laws and regulations. If no confidentiality claim accompanies information when it is submitted to the IEPA, Attorney General or U.S. EPA, or if information claimed as confidential is determined by the IEPA, Attorney General or U.S. EPA not to be confidential, the information may be made available to the public by the IEPA, Attorney General or U.S. EPA in accordance with applicable state or federal laws or regulations.

3. Attorney Work Product/Privilege Claims. Documentary materials, ~~other than those required to be furnished under section 104(e) of CERCLA,~~ which are asserted to be attorney work product or subject to privilege under law, shall not be subject to inspection and copying prior to District Court resolution of the issue. Beloit Corporation shall provide the requesting party at the time the privilege is asserted with an identification of the title and subject matter of each document for which a privilege is asserted, and an explanation as to why the privilege is applicable to the document. The provisions of Section XXV: DISPUTE RESOLUTION shall not apply to disputes over confidentiality. For purposes of this Consent Decree, "privileged documents" and "attorney work product" do not include

collected sampling data related to this Facility or laboratory analyses of them or investigative reports if they are required by this Consent Decree even if prepared at the request of one of Beloit Corporations's attorneys.

4. Sampling Data. Beloit Corporation shall provide to IEPA, upon request, sampling data obtained in the investigation of releases or threatened releases of hazardous substances related to this Facility collected after the effective date of this Consent Decree and laboratory analyses of same even if it is not required to be collected or analyzed by this Consent Decree. Information acquired or generated by Beloit Corporation in performance of the work ²~~that is subject to the provisions of~~
~~Section 104(e)(7)(F) of CERCLA, 42 U.S.C. Section 9604(e)(7)(F),~~
shall not be claimed as confidential.

XXII. QUALITY ASSURANCE

A. QAPP.

Prior to the commencement of any monitoring project under this Consent Decree, Beloit Corporation shall submit in accordance with the schedule set forth in this Consent Decree Quality Assurance Project Plan(s) ("QAPP") to the State that are consistent with the RI/FS Work Plan and applicable guidelines. The State, after review of Beloit Corporation's QAPP(s), will

notify Beloit Corporation of any required modifications, conditional approval, disapproval, or approval of the QAPP(s). Subject to Section XXV: DISPUTE RESOLUTION of this Consent Decree, upon notification of disapproval of any need for modifications, Beloit Corporation shall make all required modifications in the QAPP(s).

B. QUALITY ASSURANCE GUIDANCE.

Beloit Corporation shall use quality assurance, quality control, and chain of custody procedures throughout all data collection activities, in accordance with the latest edition of the following:

1. "Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans" QAMS-005/80 (USEPA-600/4-83-004), Office of Monitoring Systems and Quality Assurance, Office of Research and Development, USEPA, February 1983;
2. "State-Lead Quality Assurance Project Plan Guidance", Appendix L to "State Participation in the Superfund Remedial Program", USEPA OERR, February 1984, revised January 1986;
3. "Guidance for Preparation of Combined Work/Quality Assurance Project Plans for Water Monitoring", USEPA OWRS, May 1984;

4. "NEIC Policies and Procedures", EPA-330-9-78-001, USEPA OLEC, May 1978, rev. February 1983;
5. "Principles of Environmental Analysis", Lawrence H. Keith, et al., Anal. Chem., Vol. 55, No. 14 December 1983;
6. "Quality Assurance of Chemical Measurements", John K. Taylor, Anal. Chem. Vol. 53, No. 14, December 1981;
7. "Content Requirements for Quality Assurance Project Plan", Chem Wen Tsai, USEPA Region V. QAO, revised January 1989;
8. "Data Quality Objectives for Remedial Response Activities", Vol. 1, Development Process, USEPA OERR, EPA-540/G-87-003;
9. "Data Quality Objectives for Remedial Response Activities", Vol 2 Example Scenario, USEPA OERR, EPA-540/G-87-003; and
10. "Final Standard Quality Assurance Project Plan Content Document", USEPA, June 1989.

C. CONSULTATION WITH PROJECT MANAGER.

Upon request, the Project Coordinator shall consult with the State Project Manager in planning for, and prior to, specific sampling and analysis required by the RI/FS Work Plan.

D. VERIFIED DATA AS EVIDENCE.

Verified sampling data generated consistent with the QAPP(s) shall be admissible as evidence, over any objection, in any proceeding under Section XXV: DISPUTE RESOLUTION.

E. QUALITY ASSURANCE REQUIREMENTS.

In order to provide quality assurance and maintain quality control with respect to all samples collected pursuant to this Consent Decree, Beloit Corporation shall:

1. Ensure that IEPA, Attorney General and U.S. EPA personnel and/or their authorized representatives are allowed access to any laboratories and personnel utilized by Beloit Corporation for analyses;

2. Ensure that all sampling and analyses are performed according to U.S. EPA methods or other methods deemed satisfactory by the IEPA and U.S. EPA; and

3. Ensure that any laboratories utilized by Beloit Corporation for analyses participate in a U.S. EPA quality assurance/quality control program equivalent to that which is followed by the U.S. EPA, and which is consistent with U.S. EPA document QAMS-005-80. As part of such a program, and upon reasonable request by the State, such laboratories shall perform

analyses of samples provided by the U.S. EPA or the State to demonstrate the quality of analytical data for each such laboratory.

XXIII. FORCE MAJEURE

A. COMPLIANCE WITH SCHEDULES

Beloit Corporation shall cause all Work and activities to be performed within the time limits set forth in this Consent Decree, Statement of Work, and State approved plans, unless performance is delayed by events which constitute a force majeure.

B. DEFINITION OF FORCE MAJEURE.

1. Definition. For purposes of this Consent Decree, a "force majeure" is an event arising from causes beyond the control of Beloit Corporation and unforeseeable to the Parties at the time of their entry into this Consent Decree, which cannot be overcome by due diligence and which delays the timely performance of any obligations required by this Consent Decree.

2. Examples of Force Majeure. Force majeure shall include, but not be limited to, extraordinary weather events or conditions, natural disasters, national emergencies, and delays

caused by response or removal activities undertaken by U.S. EPA and/or IEPA.

3. Examples of Non-Force Majeure. Examples of events that are not force majeure events include, but shall not be limited to, normal inclement weather; normal seasonal changes in weather conditions; increased costs or expenses for any foreseeable item of Work to be performed under this Consent Decree; foreseeable changes in economic circumstances of Beloit Corporation or its contractor(s); any financial difficulty of Beloit Corporation which may arise as the result of performing required Work; negligent acts or omissions attributable to Beloit Corporation, its contractors or representatives.

C. NOTIFICATION OF FORCE MAJEURE.

When any force majeure event has occurred which may delay performance as scheduled under this Consent Decree, Beloit Corporation shall promptly notify the State Project Manager by telephone (217/782-6760) (or, in the event of his unavailability, the IEPA Emergency Response Section at (217/782-3637), but in any case no later than three days after Beloit Corporation knew or should have known that said event occurred. Within six business days after Beloit Corporation knew or should have known of the event or the beginning of the condition or occurrence which Beloit Corporation contends is responsible for the delay, Beloit

Corporation shall send written notification to the State Project Manager and Attorney General. Such notification shall state whether Beloit Corporation claims the delay is a result of a force majeure, shall describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, the timetable by which these measures will be implemented, and, where appropriate, a statement whether, in the opinion of the Project Coordinator, such event may present an imminent and substantial endangerment to the human health or welfare or the environment. Beloit Corporation shall adopt all practicable measures to avoid or minimize any delay. Failure to give written notification as specified above shall constitute a waiver of any claim of force majeure.

D. RESOLUTION OF FORCE MAJEURE ISSUE.

If the IEPA and the Attorney General agree that a delay is attributable to a force majeure, the time period for performance under this Consent Decree will be extended for the time period of delay occasioned by the event constituting the force majeure. The SOW and/or RI/FS Work Plan shall be deemed modified as necessary, without further amendment of the Consent Decree, and the delay shall be deemed not to be a violation of this Consent Decree. If IEPA and the Attorney General cannot agree

with Beloit Corporation (i) that a delay is attributable to a force majeure, (ii) whether the duration of the delay is or was warranted under the circumstances, or (iii) to the length of the required extension of schedule, the Parties shall resolve the dispute in accordance with Section XXV: DISPUTE RESOLUTION. Beloit Corporation shall have the burden of demonstrating that the event is a force majeure.

XXIV. STIPULATED PENALTIES

A. VIOLATIONS REQUIRING STIPULATED PENALTIES.

Beloit Corporation shall be liable to pay stipulated penalties in the amounts set forth below to the State for payment into the Illinois Hazardous Waste Fund administered by the IEPA for each violation of the requirements of this Consent Decree, including the Statement of Work and any State approved plans submitted thereunder, unless IEPA and the Attorney General (or the District Court) determine that such violation is excused as caused by force majeure as defined in Article XXIII: FORCE MAJEURE. A violation by Beloit Corporation shall include any failure to complete an activity under this Consent Decree, within the specified time schedules pursuant to this Consent Decree.

B. ACCRUAL OF PENALTIES.

All penalties and interest on unpaid penalties shall begin to accrue on the day notice of violation is received from the State and continue to accrue through the final day of correction of the noncompliance. However, penalties shall run from the date a submittal is due if the submittal is not timely, not submitted in good faith or not reasonably complete. All penalties owed to the State under this Section XXIV: STIPULATED PENALTIES shall be payable within 30 days of violation, or notice of violation when notice is required, unless Beloit Corporation invokes the Dispute Resolution procedures under this Consent Decree. Should Beloit Corporation invoke Dispute Resolution, penalties and interest shall accrue to and through the sixtieth (60th) day after invocation of Dispute Resolution and shall be suspended thereafter until the dispute is resolved.

C. NOTICE OF VIOLATION.

Following the State's determination that Beloit Corporation has violated this Consent Decree, the State shall give Beloit Corporation written notification of the same and describe the noncompliance. This notice shall also indicate the amount of penalties then due. All penalties owed to the State under this Section XXIV: Stipulated Penalties that have not been previously paid shall be payable within 30 days of receipt of the notification of violation, unless Beloit Corporation invokes the Dispute Resolution procedures under this Consent Decree.

D. RECIPIENT OF PENALTY PAYMENTS.

Stipulated penalties and any interest shall be paid by cashier's check made payable to the "Treasurer, State of Illinois" for deposit into the "Illinois Hazardous Waste Fund", and delivered to IEPA, Division of Administration, Fiscal Services Section, P.O. Box 19276, 2200 Churchill Road, Springfield, Illinois 62794-9276. The check shall contain Beloit Corporation's complete and correct address, the Facility name, and the civil action number. Copies of the check shall be mailed to the State Project Manager.

E. TERMINATION OF PENALTIES.

Should Beloit Corporation fail to comply with a time requirement of any task required by this Consent Decree, the period of noncompliance shall terminate upon Beloit Corporation's completion of performance of said requirement. In the event that Beloit Corporation corrects a deficiency so that the total RI/FS schedule is not delayed, the stipulated penalties for the corrected deficiency may be forgiven in the discretion of the State.

F. OBLIGATION CONTINUES.

Neither the filing of a petition to resolve a dispute nor the payment of penalties shall alter in any way Beloit Corporation's obligation to complete the work required by this Consent Decree.

G. PENALTY DISPUTE PROCESS.

Beloit Corporation may dispute the State's right to the stated amount of stipulated penalties by invoking the Dispute Resolution procedures under Section XXV: DISPUTE RESOLUTION. Penalties and interest thereon calculated in accordance with Paragraph K. below shall accrue but need not be paid to the State during the dispute resolution period. If Beloit Corporation does not prevail upon resolution, the State has the right to collect all penalties and interest which accrue prior to and during the period of dispute. If Beloit Corporation prevails upon resolution, no penalties or accrued interest shall be payable.

H. NO PENALTY IF FORCE MAJEURE.

No penalties or accrued interest shall accrue for violations of this Consent Decree caused by events determined to be force majeure pursuant to Section XXIII: FORCE MAJEURE.

I. AMOUNT OF STIPULATED PENALTIES.

The following stipulated penalties shall be payable per violation per day to the State for any violation identified pursuant to Paragraph A. above.

| <u>Amount per day</u> | <u>Period of Noncompliance</u> |
|-----------------------|------------------------------------|
| \$ 500 | 1st through 5th day |
| \$1,500 | 6th through 14th day |
| \$2,000 | 15th through 30th day |
| \$3,000 | 31st through 44th day |
| \$4,000 | 45th day and beyond. |

J. INTEREST ON PENALTIES.

Interest shall accrue on any amount overdue pursuant to Rule 2-1303 of the Illinois Code of Civil Procedure.

K. PENALTY COLLECTION.

If Beloit Corporation fails to pay stipulated penalties, the State may institute proceedings to collect the penalties. In the event the State is successful, collection activities shall be a response cost reimbursable by Beloit Corporation. Notwithstanding the stipulated penalties provisions of this Section, the State may elect to bring an action in court to enforce the provisions of this Consent Decree. Payment of stipulated penalties shall not preclude the State from pursuing statutory penalties against Beloit Corporation for violations of other statutory or regulatory requirements.

XXV. DISPUTE RESOLUTION

A. INFORMAL EFFORTS/NOTICE OF DISPUTE.

The Parties shall use their best efforts to resolve all disputes or differences of opinion arising with regard to this Consent Decree informally and in good faith (with such exceptions as provided in Paragraph J. below). If, however, disputes arise concerning this Consent Decree which the Parties are unable to resolve informally (with such exceptions as provided in Subparagraph J. below), any Party desiring dispute resolution ("Complaining Party") shall give a prompt written "Notice of Dispute" to the other parties to this Consent Decree and the following procedures shall be used.

B. COMPLAINANT'S STATEMENT OF POSITION.

Within ten days of the service of Notice of Dispute, the Complaining Party who gave the notice shall serve on the other parties to this Consent Decree, a written statement of the issues in dispute, the relevant facts upon which the dispute is based, the position of the Complaining Party and the technical basis therefor, including factual data, analyses, or opinion supporting its position, and all supporting documentation on which such party relies, and any actions which the Complaining Party considers necessary to resolve the dispute (the "Complainant's Statement of Position").

C. RESPONSIVE STATEMENTS OF POSITION.

The other Parties to this Consent Decree shall serve their written Responsive Statements of Position, specifically addressing all the points raised by the Complaining Party and identifying potential areas of agreement and disagreement, and including supporting documentation no later than fourteen (14) days after receipt of the Complainant's Statement of Position. During the 14 days following receipt of the Complainant's Statement of Position, the Parties shall attempt to negotiate, in good faith, a resolution of their differences.

D. ADMINISTRATIVE RECORD OF DISPUTE.

An Administrative Record of Dispute under this Section shall be maintained by the State. The Record shall include all information submitted by any Party respecting the dispute, including the written Notice of Dispute, the Statements of Position served pursuant to the preceding sections, and any other relevant information provided by the Parties. The record shall be available for review by all the Parties.

E. ADMINISTRATIVE ORDER RESOLVING DISPUTE.

After the expiration of the 14 days following receipt by all interested parties of the Complainant's Statement of Position, the Manager of the Land Pollution Control Division of IEPA or his

express delegate, in consultation with the Attorney General, shall issue a written, final Administrative Order Resolving Dispute which shall be immediately appealable to the District Court as provided in Paragraph F. below. The Manager of the Land Pollution Control Division of IEPA or his express delegate, acting in consultation with the Attorney General, shall issue the final Administrative Order based solely on a review of the Administrative Record for the specific dispute. The Order shall explain the basis of the Order in a fashion sufficient to allow judicial review, pursuant to Paragraph F., below.

F. NOTICE OF JUDICIAL APPEAL.

The Final Administrative Order pursuant to the preceding subsection shall be reviewable by this Court, upon filing of a Notice of Judicial Appeal within ten (10) days of receipt of IEPA's Administrative Order Resolving Dispute. Judicial review shall be conducted solely on the Administrative Record of Dispute prepared under this Section, and the Party seeking judicial review shall have the burden to prove the Administrative Order Resolving Dispute is arbitrary and capricious, or is not in accord with applicable law or is not in otherwise accordance with the objectives and terms of this Consent Decree. Neither the Illinois Administrative Procedure Act (Ill. Rev. Stat., 1988, ch. 127 § 1001 et seq.) nor the Illinois Administrative Review Act (Ill. Rev. Stat., 1988, ch. 110 § 3-101 et seq.) shall apply to

judicial review of the IEPA's Administrative Order Resolving Dispute.

G. NO SUSPENSION FOR UNAFFECTED WORK.

Elements of Work and/or obligations not affected by the dispute shall be completed in accordance with the schedule contained in the RI/FS Work Plan.

H. ACCRUAL OF PENALTIES DURING DISPUTE RESOLUTION.

Penalties and interest shall accrue during the period of dispute resolution as set forth in Section XXIV.B.

I. INCORPORATION OF CHANGES.

Upon resolution of any dispute, the Parties shall move the Court to amend this Consent Decree or attached Statement of Work as appropriate, to incorporate any additions or modifications and schedule adjustments required as a result of such dispute resolution. Beloit Corporation shall proceed with all remaining Work according to the amended Consent Decree or modified RI/FS Work Plan or procedure and schedules.

J. EXCLUSIONS FROM DISPUTE RESOLUTION.

The following are excluded from Dispute Resolution:

1) Actions taken by the IEPA Project Manager when he exercises his authority under Paragraph C: HALTING ACTIVITY of

Section XX: PROJECT COORDINATOR AND PROJECT MANAGER, to halt, suspend, conduct, or direct any activity required by this Consent Decree, or to direct any response action undertaken by the IEPA, when conditions at the Facility may present an imminent and substantial endangerment to the public health or welfare or the environment.

2) Emergency action taken by the IEPA pursuant to Section 4(d)(2) and/or 22.2 of the Illinois Environmental Protection Act.

XXVI. COMMUNITY RELATIONS AND PUBLIC COMMENT

Beloit Corporation shall cooperate with the State in providing RI/FS information to the public. As requested by the State, Beloit Corporation shall reasonably participate in the preparation of all appropriate information disseminated to the public and in public meetings which may be held or sponsored by the IEPA to explain activities at or concerning the Facility, including the findings of the RI/FS. In advance of issuing written materials as part of Community Relations, IEPA and the Attorney General shall afford Beloit Corporation reasonable opportunity to review the proposed materials.

XXVII. RECORD PRESERVATION

A. RECORDS PRESERVED.

Beloit Corporation shall preserve, during the pendency of this Consent Decree, and for a minimum of six years after termination of this Consent Decree, all non-privileged documents in the possession, custody or control of Beloit Corporation, and its agents, accountants, contractors, or attorneys, which relate in any way to work required by this Consent Decree, including, but not limited to, documents reflecting the results of any sampling, tests, or other data or information generated or acquired by any of them, or on their behalf, with respect to the Facility and all documents pertaining to their own or any other person's liability for response action or costs under CERCLA and the Act.

B. ACCESS TO RECORDS.

The State shall have access to such documents, and upon request by the IEPA, Attorney General or U.S. EPA, Beloit Corporation shall provide to the IEPA, Attorney General and U.S. EPA such documents, or copies of any such documents, subject to Subsection E.: CONFIDENTIALITY CLAIM of Section XXI: SAMPLING AND DATA/DOCUMENT AVAILABILITY of this Consent Decree, and to privileges arising by state or federal law. Upon request by IEPA, the Attorney General or U.S. EPA, during the last year of

the six year retention period, Beloit Corporation shall relinquish custody of the documents to the said requesting agency or office.

C. ACCESS TO EMPLOYEES.

Beloit Corporation shall make available to the State any employees and agents, employed by it, or the names and last known addresses of former employees and agents, including the Project Coordinator, with knowledge of relevant facts concerning the performance of the Work required by this Consent Decree for purposes of investigation, information gathering, or testimony related to the Work for a period of six years after termination of this Consent Decree.

XXVIII. CERCLA AND STATE FUNDING

A. WAIVER OF CLAIMS.

Beloit Corporation waives any claims or demands for compensation or payment ~~under Section 106(b)(2), 111 and 112 of CERCLA, as amended, against the United States or the Hazardous Substances Response Superfund established by Section 9507 of Title 26 of the United States Code, and~~ against the State of Illinois, for or arising out of activity performed or expenses incurred pursuant to this Consent Decree; provided, however, should the Work required by this Consent Decree demonstrate that

for the State of Illinois
Beloit is not liable under CERCLA § 107 for all or any portion of work performed, there shall be no waiver of claims, *against the State of Illinois* as to that portion of work for which Beloit is not a liable party under CERCLA, and all claims or demands, as to such portion are preserved.

against the State of Illinois

B. NO PREAUTHORIZATION OF FUNDS.

This Consent Decree does not constitute, and shall not be construed to constitute, approval or certification of response costs for purposes of Section 111(a)(2) of CERCLA, as amended.

XXIX. RESERVATION OF RIGHTS

A. STATE RESERVES RIGHTS.

1. All rights reserved. The State reserves all rights and defenses that it may have pursuant to any available legal authority.

2. Right to Sue Persons. The State expressly reserves the right to sue or continue to sue any person or entity in connection with the Facility, other than Beloit Corporation for matters covered by this Consent Decree. The State expressly reserves the right to sue Beloit Corporation as set forth in this Consent Decree.

3. No Waiver. Nothing herein shall be deemed a waiver of any right or defense available to the State in any proceeding, action or claim against them. In addition, nothing herein shall limit the right of the State to defend any action brought against it.

4. Additional Action. Except as provided in Section XXIV: STIPULATED PENALTIES, Paragraph L., nothing herein shall limit or waive the right of the State to enforce this Consent Decree, to take action pursuant to Sections ~~104, 106(a), 107 or 110~~ of CERCLA, as amended, or pursuant to Section 22.2(f) of the Act, or to take any other action pursuant to any other available legal authority. The State reserves the right to take any enforcement action pursuant to any available legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages.

5. Future Response Costs. The State reserves the right to bring an action against Beloit Corporation for recovery of any future Response Costs not inconsistent with the NCP incurred by the State in connection with any response activities conducted or to be conducted at the Facility, other than those response activities successfully completed pursuant to this Consent Decree to the satisfaction and reasonable approval of the IEPA in consultation with the Attorney General.

6. Failure to Perform. Nothing herein shall be construed to release Beloit Corporation from any liability for failure to

perform the RI/FS in accordance with the RI/FS Work Plan. Except as to the requirements established in Section XXV: DISPUTE RESOLUTION, nothing herein shall be construed to limit or in any way impair the ability of the State to secure satisfaction of the Work to be undertaken pursuant to this Consent Decree in the event that Beloit Corporation fails to perform the Work in accordance with this Consent Decree, Statement of Work, or approved RI/FS Work Plan. The Parties further expressly recognize that this Consent Decree and the successful completion and approval of the RI/FS do not represent satisfaction, waiver, release, or covenant not to sue, of any claim of the State of Illinois against Beloit Corporation relating to the Facility, (including claims to require Beloit Corporation to undertake further response actions and claims to seek reimbursement of response costs pursuant to Section 107 of CERCLA or Section 22.2(f) of the Act)) except that, upon receipt of written notice of satisfaction as provided in Section XL: CERTIFICATION AND TERMINATION OF THIS CONSENT DECREE, Beloit Corporation shall have no further obligations under this Consent Decree or for costs for which it has reimbursed the State under this Consent Decree. Should the State undertake an RI/FS as provided for by this Consent Decree, it may petition the Court to terminate this Consent Decree. Before the State petitions the Court to terminate this Consent Decree, the State shall provide Beloit Corporation with reasonable notice thereof.

7. Remedial Work and Recovery of Costs. In the event Beloit Corporation fails to comply with this Consent Decree, the State reserves the right to undertake the work required by the Consent Decree. Further, the State reserves the right to take any other remedial investigation/ feasibility study work, and/or any removal, remedial and/or response actions relating to the Facility not covered by the Consent Decree, and to seek recovery from Beloit Corporation for any costs incurred in undertaking such actions.

8. Not a Party to Contracts. The State is not a party to, and does not assume any liability for, any contract entered into by Beloit Corporation in carrying out the activities pursuant to this Consent Decree.

B. NON-PARTY RELEASE.

1. No Release for Non-Parties. Nothing herein is intended to release, discharge, or in any way affect any claims, causes of action or demands in law or equity which the Parties may have against any person, firm, partnership or corporation not a party to this Consent Decree for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release or disposal of any materials, hazardous substances, hazardous wastes, contaminants, or pollutants at, to, or from the Facility. The Parties to this Consent Decree expressly reserve all rights, claims, demands, and

causes of action they have against any and all other persons and entities who are not parties to this Consent Decree, and as to each other for matters not covered hereby.

2. Right to Contribution. The State recognizes that Beloit Corporation may have the right to seek contribution, indemnity and/or any other available remedy against any person as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

3. Non-Party Injury or Damage. Nothing herein is intended to be a release or settlement of any claim for personal injury or property damage by any person not a party to this Consent Decree. This Consent Decree and the performance of Beloit Corporation hereunder shall not create any private rights.

C. NO ADMISSION BY BELOIT CORPORATION.

1. No Admission. Nothing in this Consent Decree, the attached Statement of Work, or other documents produced in the performance of the RI/FS shall constitute an admission of law or fact by Beloit Corporation. Entry into this Consent Decree or taking actions in accordance with it, shall not constitute an admission of liability for conditions at or near the Facility against any and all persons and entities who are not parties to this Consent Decree. Nothing in this Consent Decree may be used in any fashion or admitted into evidence in any proceeding other than to enforce the terms of this Consent Decree, except it may be admissible in a judicial or administrative proceeding between

Beloit Corporation and its insurance companies; or in a contribution action brought by Beloit Corporation against another potentially responsible party, or at the option of Beloit Corporation, in an action between Beloit Corporation and another owner or operator of real property located within the Facility.

By signing and consenting to this Consent Decree or by taking any actions pursuant to this Consent Decree, Beloit Corporation does not concede that the RI/FS Work Plan or any other investigation at the Site is necessary to protect the public health or welfare or the environment, or for any other reason; that the methodologies or protocols prescribed by applicable IEPA guidance or described or noted herein or otherwise required by IEPA for performance of Work pursuant to this Consent Decree are the only ones appropriate for the proper conduct of this RI/FS Work Plan; or that a release or threatened release of a hazardous waste or substance at or from the Facility, or any disposal of a hazardous waste or substance at the Facility, may present an imminent and substantial endangerment to the public health or welfare or the environment. Beloit Corporation has agreed to this Consent Decree to avoid unnecessary conflict or litigation.

2. Reservation of Rights. Beloit Corporation reserves its rights and defenses regarding liability or responsibility in any subsequent proceeding regarding this Facility, other than proceedings to enforce this Consent Decree. Beloit Corporation specifically reserves the right to contest any determination,

allegations, findings, and conclusions by the State herein, in any proceeding regarding the Facility other than a proceeding brought by the State to enforce this Consent Decree. Beloit Corporation does not, by signing this Consent Decree, waive any right it may have to assert claims under CERCLA against any person, as defined in Section 101(21) of CERCLA. This Consent Decree shall be evidence only of the agreements contained herein. However, nothing in this Consent Decree shall prohibit its use by the Parties hereto to establish its existence and terms or to enforce it.

D. CONTRIBUTION PROTECTION.

The Court finds that by entering into this Consent Decree, Beloit Corporation, pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f), shall not be liable for claims for contribution for any matters covered by this Consent Decree.

XXX. FORMAL APPROVAL

No informal advice, guidance, suggestions or comments by the State regarding reports, plans, specifications, schedules, and any other writing submitted by Beloit Corporation may be construed as relieving Beloit Corporation of its obligations to obtain any formal approval as may be required by this Consent Decree.

XXXI. NO WARRANTY

The State, by its consent to the entry of this Consent Decree, does not warrant in any manner, that Beloit Corporation's complete compliance with this Consent Decree will result in future compliance with the provisions of CERCLA, RCRA, the National Contingency Plan, future Cleanup Standards, the Act or 35 Ill. Adm. Code Subtitle G: Waste Disposal. Notwithstanding IEPA's review and approval of any plans formulated pursuant to this Consent Decree, Beloit Corporation shall remain solely responsible for compliance with the terms of CERCLA, RCRA, the National Contingency Plan, the Illinois Environmental Protection Act, this Consent Decree, 35 Ill. Adm. Code Subtitle G. Waste Disposal, etc, except as expressly excused herein.

XXXII. REIMBURSEMENT OF RESPONSE COSTS

A. PAST RESPONSE COSTS.

1. Reimbursement for Attorney General's Past Response Costs. The Attorney General shall provide Beloit Corporation with a detailed accounting that shall include a detailed summary of all expenses claimed and a statement that the expenses have actually been incurred and paid. Upon request, the Attorney General shall provide Beloit Corporation with copies of all receipts and other documents evidencing such expenditures and no

reimbursement shall be required in the absence of such documentation. Said detailed accounting shall include all Response Costs incurred by the Attorney General with respect to this Consent Decree prior to the entry of this Consent Decree. This accounting shall not include Response Costs reimbursed, or to be reimbursed, by U.S. EPA, pursuant to any existing cooperative or enforcement management agreement with IEPA. *This accounting*

2. Reimbursement for IEPA Past Response Costs. The IEPA shall provide Beloit Corporation with a detailed accounting that shall include a detailed summary of all expenses claimed and a statement that the expenses have actually been incurred and paid. Upon request, the IEPA shall provide the Beloit Corporation with copies of all receipts and other documents evidencing such expenditures, excluding actual IEPA employee signed timesheets. No reimbursement shall be required in the absence of such documentation. Said detailed accounting shall include all Response Costs incurred by IEPA with respect to this Consent Decree prior to the entry of this Consent Decree. This accounting shall not include Response Costs reimbursed, or to be reimbursed, by U.S. EPA, pursuant to any existing cooperative or enforcement management agreement with IEPA. *shall not include any costs incurred by U.S. EPA in connection with the Facility.*

B. FUTURE RESPONSE COSTS.

1. Attorney General's Future Response Costs. The Attorney General shall submit to Beloit Corporation a detailed accounting

*This accounting shall not include
(same as above)*

that shall include a detailed summary of all expenses claimed and a statement that the expenses have actually been incurred and paid. Upon request, the Attorney General shall provide Beloit Corporation with copies of all receipts and other documents evidencing such expenditures, and no reimbursement shall be required in the absence of such documentation. Said detailed accounting shall include all Response Costs incurred pursuant to this Consent Decree by the Attorney General with respect to this Consent Decree after the effective date of this Consent Decree.

*This
accounting
....
(same)*

2. IEPA Future Response Costs. IEPA shall submit to Beloit Corporation detailed accounting that shall include a detailed summary of all expenses claimed and a statement that the expenses have actually been incurred and paid. Upon request, IEPA shall provide Beloit Corporation with copies of all receipts and other documents evidencing such expenditures, excluding actual IEPA employee signed timesheets. No reimbursement shall be required in the absence of such documentation. Said detailed accounting shall include all Response Costs incurred pursuant to this Consent Decree by the Attorney General with respect to this Consent Decree after the effective date of this Consent Decree.

*This
accounting
....
(same)*

C. PAYMENT REQUIREMENTS.

1. Attorney General.

Checks for past and future Attorney General's Response Costs shall be made payable to the "State Projects and Court Ordered Distribution Fund" and designated on the check for

"Environmental Enforcement", and delivered to Illinois Attorney General's Office, Chief, Environmental Control Division, 100 West Randolph, 12th Floor, Chicago, Illinois 60601. The name and number of this case, along with the Illinois site ID number shall appear on all checks.

2. IEPA. Cashier's checks for past and future IEPA Response Costs shall be made payable to the "Treasurer, State of Illinois" for deposit into the "Illinois Hazardous Waste Fund". The name and number of this case, along with the Illinois Site ID number shall appear on all checks. The checks shall be delivered to IEPA, Division of Administration, Fiscal Services Section, P.O. Box 19276, 2200 Churchill Road, Springfield, Illinois 62794-9276. A copy of the transmittal letter and check shall be sent to the State Project Manager.

D. BILLING PERIODS.

The billing periods for the Attorney General's and IEPA's Response Costs shall be no more frequently than quarterly.

E. DUE DATE/DISPUTE RESOLUTION.

1. Due Date. Beloit Corporation shall, within 30 calendar days of receipt of each said accounting from the Attorney General and IEPA, remit checks for the amount of those costs, unless Beloit Corporation objects in writing to said accounting(s). Undisputed amounts shall be paid when due.

2. Dispute with Attorney General. Any dispute with the Attorney General's accounting shall be resolved in accordance with Section XXV: DISPUTE RESOLUTION, except that, instead of "Manager of the Land Pollution Control Division of IEPA or his delegate, in consultation with the Attorney General" in Paragraph E: ADMINISTRATIVE ORDER RESOLVING DISPUTE OF SECTION XXV: DISPUTE RESOLUTION, the phrase, "Chief, Environmental Control Division, Attorney General's Office, or her delegate, in consultation with IEPA" shall be substituted. Furthermore, in place of "IEPA" in Paragraph F: NOTICE OF JUDICIAL APPEAL, the phrase "Attorney General's Office" shall be substituted.

3. Dispute with IEPA. Any dispute with IEPA's accounting shall be resolved in accordance with Section XXV: DISPUTE RESOLUTION of this Consent Decree.

F. COVENANT NOT TO SUE.

In consideration of receipt of all monies due for past and future response costs incurred by the State, in the amounts described in this Section, the State covenants not to sue Beloit Corporation for any Response Costs incurred prior to and after the effective date of this Consent Decree. In the event that such Response Costs are not paid in a timely manner, the State shall be released from this covenant not to sue so long as they remain unpaid.

G. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN.

Pursuant to CERCLA, Section 107(a)(1) - (4)(A), the Response Costs for which reimbursement is sought shall be not inconsistent with the National Contingency Plan.

H. RESPONSE COSTS AT TIME OF TERMINATION.

If Response Costs reimbursable under this Consent Decree are outstanding at the time the State plans to terminate this Consent Decree, Beloit Corporation shall, within 30 days of the submission of an accounting, and before termination of this Consent Decree, pay such Response Costs. In the event that such Response Costs are not paid in a timely manner, the State shall be released from the covenants not to sue contained in this Section.

XXXIII. INDEMNIFICATION

The Beloit Corporation agrees to indemnify, save and hold harmless the State of Illinois, its agencies, departments, agents, and employees, from any and all claims or causes of action arising solely from, or on account of, the negligent acts or wrongful omissions of Beloit Corporation, its officers, employees, receivers, trustees, agents, or assigns, related to carrying out the activities pursuant to this Consent Decree. If the State seeks indemnification, it shall tender the claim to Beloit Corporation following reasonable notification of the basis

for such claim or demand, setting forth the nature of the claim or demand in detail.

XXXIV. INSURANCE FOR STATE

Prior to the commencement of any Work under this Consent Decree, Beloit Corporation shall ensure that the contractor or subcontractor performing such Work maintains Comprehensive General Liability insurance in the amount of at least \$1 million dollars per occurrence with an annual aggregate of at least \$1 million, and if the contractor's policy so permits, the State shall be named as an additional insured. At least seven days prior to commencement of any work at the Facility, Beloit Corporation shall provide the State with current copies of certificates of each insurance policy throughout the duration of the work performed under this Consent Decree.

XXXV. SUBSEQUENT AMENDMENT

A. MUTUAL AGREEMENT.

In addition to the procedures set forth in Articles XXIII: FORCE MAJEURE, this Consent Decree may be amended by mutual agreement of the State and Beloit Corporation, or upon approval of the District Court.

B. EFFECTIVE DATE.

Except as otherwise provided for in this Consent Decree, any amendment to this Consent Decree shall be in writing, signed by the Attorney General's Office, IEPA and the authorized representatives of Beloit Corporation, and shall have as the effective date that date on which such amendment is entered by the District Court.

C. INFORMAL AMENDMENT.

Any amendment of any report or plan, including the RI/FS Work Plan and its subordinate plans, required by this Consent Decree (other than the Statement of Work attached to this Consent Decree), or any amendment of any requirement under said report or plan, shall be: (1) made with the concurrence of Beloit Corporation's Project Coordinator, (2) in writing, (3) signed by the State Project Manager and (4) mailed simultaneously to the persons named in Section XVI: ADDRESS FOR ALL CORRESPONDENCE. It shall be effective 14 days after it is mailed.

XXXVI. ADMINISTRATIVE RECORD FOR RECORD OF DECISION

The IEPA, with the cooperation of the Attorney General, shall maintain an administrative record meeting the requirements of Section 113(k)(1) of CERCLA and the National Contingency Plan, Subpart I, Section 300.800 et seq., upon which to base the selection of a final remedy selection action. Among other

things, any Informal Amendments of reports or plans pursuant to Section XXXV. C.: INFORMAL AMENDMENT shall be part of this administrative record.

XXXVII. DEADLINES/RECEIPT

A. DEADLINES.

Deadlines for meeting requirements under this Consent Decree will be deemed to be met if met by midnight of the last day of the relevant month if a day of the month is not stated.

B. RECEIPT.

Items mailed shall be presumed received five days after mailing. Actual date of receipt shall be determined by certified mail receipt card if one is used, by other evidentiary methods acceptable to IEPA, or the date the item is stamped in by the State.

XXXVII. RETENTION OF JURISDICTION

The District Court shall retain jurisdiction of this matter for the purposes of interpreting, implementing and enforcing this terms and conditions of this Consent Decree and for the purpose of adjudicating all matters of dispute among the parties.

XXXIX. SEVERABILITY

A. SEVERABILITY.

The provisions of this Consent Decree shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law or the National Contingency Plan, the remaining clauses shall remain in full force and effect.

B. CONTROLLING PROVISIONS.

In the event that any provisions of this Consent Decree, its attachments or State approved plans or reports are found by this District Court to be inconsistent with the provisions of the Illinois Environmental Protection Act, CERCLA or the National Contingency Plan, the provisions of the Illinois Environmental Protection Act, CERCLA and the National Contingency Plan shall be controlling and shall apply.

XL. CERTIFICATION AND TERMINATION

A. SUBMISSION OF CERTIFICATION

Upon completion of the Work as provided in this Consent Decree, Beloit Corporation shall submit a certification to IEPA and the Attorney General which states that the Work has been completed in satisfaction of the requirements of this Consent Decree.

B. REVIEW OF CERTIFICATION.

The IEPA, in consultation with the Attorney General, shall review the Work within 90 days of receipt of the certification and indicate the State's agreement or disagreement as to its satisfactory completion. If the IEPA, in consultation with the Attorney General, needs additional time for said review, it shall so notify the Beloit Corporation. If the IEPA, in consultation with the Attorney General, determines that the Work has not been completed in accordance with the requirements of this Consent Decree, the State shall notify Beloit Corporation in writing what should be done to complete the Work, referencing the specific provisions of this Consent Decree and Statement of Work, and proposing a schedule for completion. If Beloit Corporation disagrees with any such determination by the IEPA, the dispute resolution provisions of Section XXV: DISPUTE RESOLUTION shall apply.

C. DEEMED SATISFACTION.

With the exception of Sections XXVII: RECORD PRESERVATION, XXVIII: CERCLA FUNDING, XXIX: RESERVATION OF RIGHTS, XXXII: REIMBURSEMENT OF RESPONSE COSTS and XXXIII: INDEMNIFICATION, the provisions of this Consent Decree shall be deemed satisfied upon receipt by Beloit Corporation of written notice from the State that all of the terms of this Consent Decree, including any

additional work, modifications or amendments, have been completed in accordance with the terms hereof to the satisfaction of the IEPA, in consultation with the Attorney General's Office, or upon resolution of said issue using Dispute Resolution. Upon said satisfaction of this Consent Decree, or upon agreement of all Parties, this Consent Decree shall terminate, with the exception of those sections stated herein.

ENTERED this _____ day of _____, 1990.

Judge

The parties whose signatures appear below hereby consent to the terms and entry of this Consent Decree.

PEOPLE OF THE STATE OF ILLINOIS

ROLAND W. BURRIS
Attorney General
State of Illinois

DATE: 5/7, 1991

By: Matthew J. Dunn
MATTHEW J. DUNN, Chief
Environmental Control Division

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DATE: 9-27, 1990

By: Joseph E. Svoboda
Joseph E. Svoboda
General Counsel

BELOIT CORPORATION

DATE: March 4, 1991

By: _____

Lennis Hays